S.B.Civil Second Appeal NO.39/1992

Rameshwar Prasad

vs

Himmta Ram & Ors.

DATE OF ORDER : - 11.10.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. R.R.Nagori, for the appellant.
Mr. S.M.Parihar, for the respondents.

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Heard learned counsel for the parties.

This appeal is against the judgment and decree dated 29th July, 1987 by which the appellants-plaintiffs' suit for possession filed on the basis of title was dismissed by the trial court and against the judgment and decree of the first appellate court dated 16th Nov., 1991 by which the appellate court dismissed the appeal of the appellants.

Learned counsel for the appellant vehemently submitted that the two courts below have committed serious illegality in appreciating the facts of the case and also committed serious illegality in appreciating the evidence. It is also submitted that the courts below have committed serious illegality

construing the sale deed Ex.6 dated 12th Oct., 1962 by which the appellants-plaintiffs purchased the property in question. Learned counsel for the appellant further submits that the seller of the plot in dispute Jugat Singh himself appeared in witness box and stated on oath that he executed the sale deed and appellant also produced the witnesses, who attested the sale deed Ex.6 and they proved the sale deed. In the sale deed, there is clear mention that possession of the plot was delivered to the plaintiff. In addition to the above, there is oral evidence also, which shows that possession of land was delivered to the plaintiff and plaintiff was in possession of the property. Despite all these facts, the courts below felt influenced by the statement of the witness Jugat Singh only because he stated in his statement as he has not very specially stated that he gave possession of the plots to the plaintiff and was not sure how many plots he sold by the sale deed in question and he stated only that he might have sold the plot and he might have sold the two plots whereas by the sale deed Ex.6, four plots were purchased by the plaintiff. According to learned counsel for the appellant even if the seller has turned hostile then his statement detrimental to the interest of the plaintiffs are not binding upon the plaintiff and the other evidence can be looked into to find out the truth.

Learned counsel for the appellant relied upon the judgment of the

Hon'ble Apex Court delivered in the case of Nedunuri Kameshwaramma Vs. Sampati Subba Roa reported in AIR 1963 SC 884 wherein the Hon'ble Apex Court held that the legal inference from the proved facts may raise a question of law. In this case, according to learned counsel for the appellant, the courts below have drawn a wrong inference from the proved fact, i.e., the sale deed Ex.6 dated 12th Oct., 1962 and thereby committed serious illegality and it arises a question of law.

I considered the submissions of learned counsel for the appellant. At the outset it may be noticed that the plaintiffs' case is that the sale deed was executed by one Jugat Singh in his favour on 12th Oct., 1962, that sale deed is registered document and in that sale deed it is mentioned that possession was given to the plaintiff. Assuming for the sake of arguments, that the sale deed contains these recitals and in the light of the evidence produced by the plaintiff sale deed stands proved, still question arises that whether simply because a fact has been mentioned in the registered sale deed of the plaintiff, can it bind the defendant at all. The fact mentioned in the sale deed may be relevant fact and when is in issue then the fact mentioned in the sale deed required to be supported by corroborating evidence and mere recital in the deed in dispute itself cannot become a proof of a fact simply because it has been written in the deed. Apart from it, the fact mentioned in the sale deed

can be an admission of the seller and binds the seller only. The admission if relied upon by the purchaser, which is mentioned in the sale deed, then that admission of fact is only an admission of a fact in favour of the person setting up the document and not binding upon the person, who is challenging it. The two courts below after considering the document Ex.6 and oral evidence reached to the conclusion that plaintiff failed to prove his prior possession and also failed to prove that defendants dispossessed the plaintiff as state by the plaintiffs. Therefore, this is a question of fact decided by the two courts below after appreciation and consideration of oral as well as documentary evidence and I do not find that the two courts below have committed any illegality in it. I do not find any force in the submission of learned counsel for the appellant that the courts below either have misconstrued the Ex.6, sale deed.

Learned counsel for the appellant further submits that the courts below have further committed illegality in observing that the plaintiff failed to prove the tile of Jugat Singh, predecessor in title, despite the fact that the title of the Jugat Singh was not in question. From bare perusal of written statement it is clear that in the written statement there is specific plea of the defendant that Jugat Singh is not owner of the property. Despite this fact, no title deed of Jugat Singh was produced. Apart from it, the question decided by the two courts below is that even if that sale deed was executed by Jugat Singh and this

court even after assuming that Jugat Singh might be owner of the property in dispute, but plaintiff failed to prove that he was given possession and the defendants dispossessed the plaintiff as stated by the plaintiff is a finding of fact recorded by the courts below. Therefore, this submission of learned counsel for the appellant cannot give any benefit to the appellant.

Learned counsel for the appellant submitted that defendant failed to prove his title of the property and, therefore, two standards were adopted by the two courts below. While deciding the title of the appellant, the two courts below questioned the title of the seller of the plaintiff whereas when the defendants have not produced the title of their seller, the court has not taken note of this important fact. The argument advance by learned counsel for the appellant appears to be quite attractive, but having no substance. In a suit based on title, if plaintiff failed to prove his title and right to take possession the defendants' title and their right to remain in possession becomes absolutely irrelevant and plaintiff is not entitled for any decree simply on the ground that he failed to prove his title and his right to get possession from the defendants. The argument cannot be accepted for further reason that plaintiff cannot rely upon the weekness in the case of defendant after failing to prove his case. Learned counsel for the appellant also tried to submit that there are contradictions in the evidence of the defendants, which are material

contradictions because they are relating to the title of the property of the defendants as claimed by the defendants. The scope under Section 100 of the CPC cannot be expanded to the extent of re-appreciation of the evidence to arrive at a different conclusion than the conclusion to which the courts below have reached. I do not find that the contradictions are so material looking to the passes of the time after the execution of the deed.

In view of the above, I do not find any force in the submissions of learned counsel for the appellant. Hence, the appeal of the appellant is dismissed.

(Prakash Tatia), J.

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